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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,550	11/05/2003	Nobuzo Shimizu	0080-0227P	6095

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EXAMINER
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THANH, QUANG D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/700,550

Applicant(s)

SHIMIZU ET AL.

Examiner

Quang D. Thanh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 May 2005 and 05 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/5/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of species of group I, fig. 19, including claims 1-13 in the reply filed on 5/5/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Accordingly, claims 14-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected species, there being no allowable generic or linking claim.

### ***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided.

The abstract of the disclosure is objected to because it is too long and it also includes "means" (line 16). Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

3. Claim 6 is objected to because of the following informalities: the phrase "the second rotary shaft and the first driving member being disposed on *upper* and *lower* sides of the first rotary shaft, respectively" appears to be incorrect, it should be -- the second rotary shaft and the first driving member being disposed on lower and upper sides of the first rotary shaft, respectively --

4. Claim 9 is objected to because of the following informalities: the phrase "so that projecting amounts of each pair of right and left massaging heads to a user's body are unified" is unclear. It is not clear to the examiner what the "projecting amounts" are referring to and how are these projecting amounts unified ? (jointed together ?)

Appropriate correction is required.

5. Claims 11-12 are objected to because of the following informalities: the claims recite "a second guide" but there is no first guide that has been claimed yet.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-3, 11, 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Jikiba et al. (6,629,939).

8. Re claims 1-3, 11 and 13, Jikiba discloses (claims 1 and 3) a four massaging head type massaging mechanism comprising: a first rotary shaft 52 (fig. 2) supported in a right-and-left direction; a pair of right and left swing arms 42 (fig. 2-3) relatively rotatably mounted on the first rotary shaft 52 (fig. 2); a plurality of massaging heads 41

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(fig. 2) each secured to an upper end portion and a lower end portion of each of the swing arms (fig. 2); a bracing member 45 (fig. 2) engaged with each of the swing arms so as to restrain the swing arm from rotating in connection with rotation of the first rotary shaft; a first operating mechanism 50 (fig. 2) for swinging the swing arms in opposite directions in the right-and-left direction to each other (fig. 2, col. 4, lines 42-50); and a second operating mechanism 60 linked to the bracing member 45 (fig. 2) for reciprocatingly rotating the swing arm about an axis of the first rotary shaft through the bracing member; (claims 2 and 11) a guide support portion 31 (fig. 2) for supporting the second operating mechanism so as to be movable following the rotation of the swing arm about the first rotary shaft; (claim 13) a seat portion 12 (fig. 1), a backrest portion 13 extending upward from an end portion of the seat portion (fig. 1), and the massaging mechanism being housed in the backrest portion with the massaging heads oriented toward a front side of the backrest portion (fig. 1).

9.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jikiba in view of Canto (6,443,917). Jikiba discloses a four massaging head type massaging

mechanism having all the features wherein the first operating mechanism comprises the first rotary shaft 52 and a first driving member 51 for rotary driving the first rotary shaft, except it is silent regarding a pair of right and left cam members fixed to the first rotary shaft and having cam faces inclined in the opposite directions with respect to the rotary shaft. However, Canto teaches a similar mechanism including an operating mechanism that comprises rotary shaft 2/11 and driving member 1/10 for rotary driving the rotary shaft, a pair of right and left cam members (fig. 2, elements shown between 17 and 2 and between 17 and 11) fixed to the rotary shafts and having cam faces inclined in the opposite directions with respect to the rotary shaft. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to include cam members with inclined faces, as suggested and taught by Canto, for the purpose of providing a kneading massaging action.

12. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jikiba in view of Marcantoni (6,083,181).

13. Re claims 4-7, Jikiba discloses a four massaging head type massaging mechanism having all the features including a second driving member 61 disposed on a rear side of the first rotatory shaft 52 (fig. 1-2), a second rotary shaft 62 and a first driving member 51 being disposed on lower and upper sides of the first rotary shaft 52 respectively (fig. 2), wherein the second operating mechanism 60 comprises a second rotary shaft 62 disposed in parallel to the first rotary shaft 52 (fig. 2), except for a crank

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member provided on the second rotary shaft and having a shaft portion eccentric with respect to an axis of the second rotary shaft, and an interlocking member having one end portion joined to the shaft portion of the crank member and the other end portion joined to the bracing member. However, Marcantoni teaches a massaging mechanism having a first and second operating mechanism, each mechanism having a drive member 22 and 23 respectively being disposed between the right and left swing arms (fig. 1), the second operating mechanism comprises a second rotary shaft 3 disposed in parallel to the first rotary shaft 2 (fig. 1), a crank member provided on the second rotary shaft and having a shaft portion eccentric 6/7 (fig. 3, col. 3, lines 43-50) with respect to an axis of the second rotary shaft 3, and brace member (linkage 12/13) comprising an interlocking member 12b/13b having one end portion (near 16 or 17, fig. 3-4) joined to the shaft portion of the crank member 6 or 7 and the other end portion joined to the top bracing member 12a/13a (at 18 or 19 in fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to include crank member and interlocking member, as suggested and taught by Marcantoni, such that the interlocking member 12b/13b pivotally connected to the top linkage brace member 12a/13a about an axis 18/19 (col. 4, lines 18-26), for the purpose of allowing to vary the useful length of the linkage thus providing the oscillation of the swinging arms (best seen in fig. 3, col. 4, lines 18-26) suitable for kneading massaging action.

14. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jikiba/Marcantoni and further in view of Shimizu (6,213,962). The combined Jikiba/Marcantoni discloses a four massaging head type massaging mechanism having all the features, except for a half-turn clutch mechanism provided on the second rotatory shaft. However, Shimizu teaches a massaging mechanism, which includes a half-turn clutch 21 mechanism for selectively switching the position of massaging heads into various positions for kneading or non-kneading massaging action (col. 5, lines 6-11). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to include a half-turn clutch mechanism, as suggested and taught by Shimizu, such that the massing heads can be selectively positioned in various kneading or non-kneading massaging orientations (col. 5, lines 6-11), for the purpose providing a variety of massaging actions suitable to the user's need.

#### ***Allowable Subject Matter***

15. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nonoue et al. '563 discloses a massage machine for kneading massage. Yamasaki '376 discloses a drive mechanism for a massaging apparatus.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both regular and After-Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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6/9/05  
